IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-01807-DW
OC: 01/09/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

L. A. D. Taylor (claimant) appealed a representative's February 10, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of West Liberty Foods LLC (employer) would not be charged because he had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Burlington, Iowa, on March 8, 2005. The claimant participated in the hearing with his attorney, Robert Johnson. Carrie Malin, a human resources supervisor, appeared on the employer's behalf. During the hearing, Claimant's Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 11, 2003. The claimant worked as a full-time maintenance mechanic. Steven Meyer was his supervisor. The employer's attendance policy is a no-fault policy, which means even when an employee is sick; the absence counts as an occurrence. The employer does differentiate between an excused or unexcused absence. When an employee is late for work, even by a minute, the employer counts this as an occurrence under the attendance policy. (Claimant's Exhibit 1.) The employer starts the disciplinary process after an employee has three or four occurrences in a short time frame. (Claimant's Exhibit 3 and 4.)

During his employment, the claimant received numerous warnings and suspensions for attendance problems. During the last year of his employment or until December 27, 2004, the claimant had been late for work four times. The claimant had seven days he was sick and unable to work. On October 28, 2004, when the claimant received a final written warning and a suspension, he understood his job was in jeopardy because of his attendance.

The claimant's shift started at 5:30 a.m. The claimant lives 55 miles from work. After October 28, 2004, the claimant tried to get to work by 4:30 a.m. to make sure he was not late for work.

The employer expects mechanics to work long hours. It is not unusual for a mechanic to work 10 to 11-hour shifts, seven days a week. In December 2004, the claimant worked between 6.5 and 41 hours of overtime. On December 27, the claimant was 12 minutes late for work; on December 28 he was 4 minutes late; and on December 28, the claimant was 3 minutes late for work. The claimant did not feel well on January 2, 2005. The claimant told the plant manager he did not feel well and the claimant talked to a personnel representative. The claimant understood he had permission to leave work early on January 2, 2005. Even though the claimant left work early and was a total of 19 minutes late for work during the week of December 26, he still worked 17.30 hours of overtime this week. (Claimant's Exhibit 5.) On January 5, 2005, the employer discharged the claimant for repeatedly failing to work as scheduled or for reporting to work late and then leaving work early on January 2, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Pursuant to the employer's attendance policy, the employer established compelling business reasons for discharging the claimant. The claimant violated the employer's attendance policy.

The facts do not, however, establish that the claimant intentionally disregarded the employer's interests. After the claimant received a final written warning and a suspension on October 28, 2004, he did not have any attendance issues until December 27, 2004. Even though the claimant was a total of 19 minutes late for work the week of December 26, he still worked 17.30 hours of overtime. The claimant's attendance record the last year of his employment does not establish that he disregarded the employer's rules. Instead, he was usually at work on time and repeatedly worked 10 to 11 hours a day, seven days a week. Under these facts, the claimant did not commit work-connected misconduct. Therefore, as of January 9, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 10, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 9, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs